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No. 344

IN THE

Supreme Court of the United States

October Term, 1950

UNITED STATES OF AMERICA, *Petitioner*

vs.

WARREN V. MOORE AND MRS. WARREN V. MOORE,
Respondents

On Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS

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No. 314

IN THE

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UNITED STATES OF AMERICA, *Petitioner*

VS.

WARREN V. MOORE AND MRS. WARREN V. MOORE,
Respondents

On Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS

STATEMENT

The respondents accept the statement of the petitioner as being substantially correct and as being correct insofar as the chronological date order of the events are concerned.

The respondents challenge the accuracy of the statement that the respondents had refused to comply with the act and regulation, there being no such allegation in the complaint of even a demand for compliance, nor was there any proof of a demand, nor was there any proof offered on the trial that either the expediter or the tenant involved, had made any demand for refund of the alleged overcharge. These matters are probably immaterial to the question under consideration here, yet are on a point which was raised in both the Court below and the Court of Appeals, on the question of whether a maximum legal rental had been validly proven, and as will be herein shown, are available to these respondents in support of the judgment of reversal in the Court of Appeals.

The respondents likewise challenge the accuracy of the legal conclusion, in the statement, that the Court of Appeals rested its decision on the theory that restitution of over ceiling rentals is merely ancillary or adjunctive to injunctive relief. While the Court of Appeals used such language in arriving at the controlling decision of that Court, yet nevertheless, the controlling decision was that the Act having been terminated prior to the filing of this action, that the only relief available to the petitioner was for damages, and that the one year period of limitation as provided in the Act, was applicable.

The respondents will endeavor to answer herein the argument of the petitioner in reverse order, in that the respondents strongly feel that a proper construction of

the effect of decontrol in Dallas, demonstrates that the petitioner received a more favorable decision in the Court of Appeals than that to which it was entitled, as under such proper construction no cause of action survived decontrol.

ARGUMENT

I. THE ONLY RIGHT OF THE UNITED STATES TO MAINTAIN THIS ACTION WAS CONFERRED BY TITLE II OF THE HOUSING & RENT ACT, AND NO CAUSE OF ACTION SURVIVED THE TERMINATION OF SUCH TITLE II OF THE ACT, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 204 (j) (3) THEREOF.

The Act in effect at the time this action was brought, was the Housing & Rent Act of 1949. The respondents' motion to dismiss was based upon the fact that prior to the filing of the complaint in the Trial Court, Title II of said Act (under which the action was brought), had been terminated in accordance with the provisions of Section 204 (j) (3) of such Title. In the alternative the motion to dismiss asked that the complaint, insofar as the same sought damages and or restitution for any period of time accruing more than one year prior to filing of the complaint, be dismissed.

The petitioner in its brief, page 23, concedes that the Housing Expediter in terminating controls in the City of Dallas, did not repeal the statute. It likewise concedes

that only Congress may repeal an Act, and that the Expediter's action is in "both form and effect an amendment". The contention of the Respondents herein, as urged in the Trial Court and the Court of Appeals, and as now urged again in this Court, does no violence to prior decisions of this Court on the construction of statutes of a similar nature.

It was the definite, deliberate Legislative intent that upon decontrol of a City under the provisions of Section 204 (j) (3) of the Act, that Title II thereof be terminated. This is readily apparent from the plain reading of the three modes as provided in such section for the ending of control, even without a reference to the Legislative history of the Act. A reference to the Legislative history shows that this particular provision and the choice of language used, was embodied in a report of a joint committee of the Senate and House, reconciling the difference between the enactments of the respective bodies and was a complete departure from the original provisions of both Houses of Congress. It is likewise significant that the same committee, at the same time, and for the *first* time, inserted a savings clause in Title I of the Act.

Respondents do not feel that it can be argued with any remote possibilities of success, that the termination of Title II of the Act by compliance with the provisions of Section 204 (j) (3) thereof, leaves any possible benefits to the petitioner, by reason of the savings clause contained in the terminated Title. Both the Trial Court and the Court

of Appeals fell back on the General Savings Clause in Title I, and petitioner here urges that its action was saved by such General Savings Clause. The respondents submit that under proper statutory construction, this argument is without merit. The Courts can not by judicial fiat, enlarge upon the plain unambiguous enactments of the Congress.

There is nothing ambiguous about the provisions of the General Savings Clause, 1 USC Section 109. This statute plainly and unequivocally provides that upon the *repeal* of any statute, or upon the *expiration* of a temporary statute, unless the Congress has plainly provided otherwise, such *repealed* or *expired* temporary statute should be treated in full force for the purpose of sustaining actions for the enforcement of penalties, etc.

The petitioner concedes that this statute (the rent act) was not repealed and likewise concedes that it did not expire, and for this Court to hold that Section 109 has the effect of saving any right of action, such as is asserted here, would do violence to all statutory construction, and would in effect be this Court inserting in Section 109, Title I, in addition to the governing words "*repealed*" and "*expired*", the word "amendment." This only the Congress can do.

The Congress having provided for a mode of amendment to the Act, and the Act having been amended in accordance with such provision, which amendment terminated, insofar

as the City of Dallas was concerned, Title II of the Act including the Savings Clause, nothing survived to support this action.

The opinion of the Fifth Circuit in this case is entirely compatible with its decision of the same date in Jackson vs. Woods, 182 Federal 2d, 338, in which case the equitable jurisdiction of the Court had been invoked by the filing of the action prior to decontrol, and as held by this Court in Porter vs. Warner Valley Holding Company, 328 US 395, once the equitable jurisdiction had been *properly* invoked, the Court had jurisdiction for all purposes, and it is likewise distinguishable from the later case of Miller vs. United States, which action was also filed prior to decontrol of the City of San Antonio, and is further distinguishable from the Miller case, in that in the City of San Antonio, decontrol was effected under the provisions of Section 204 (j) (2) of the Act. Regardless of what the Fifth Circuit apparently said the parties contended in that Court in the Miller case, with reference to the importance of the time of filing, that is, whether before or after the effective date of decontrol, the respondents respectfully submit that the time of the institution of the suit is legally determinative of the question of jurisdiction, in that respondents concede that under the Porter vs. Warner Valley Holding Company decision by this Court, that if the equitable jurisdiction of the Court had been invoked prior to the effective date of decontrol and when the United States still had an equitable action, then under such holding, the decontrol did

not deprive the Court of such jurisdiction, but when the equitable action died with decontrol, a suit thereafter filed, could not invoke the equitable jurisdiction of the District Court, and as held by the Fifth Circuit, no jurisdiction attached except one at law for damages. Likewise this case is distinguishable from the Miller case, in that the manner of decontrol in the City of Dallas terminated the provisions of Title II, while the Housing Accommodations involved in the Miller case were decontrolled by State Law that declared Federal Rent control is no longer necessary in the State of Texas, and the pronouncement by the Housing Expediter to that effect under the provisions of said sub-section 204 (j) (2), all that was terminated was rent controls within the State of Texas. This should give further effect to the respondents' contention that the Congress deliberate choice of language brought about the effect of complete termination of Title II as applied to this action. It is likewise significant that the Congress when the Housing & Rent Act was again under consideration in June, 1950, and after the decision by the Fifth Circuit in this case, again had before it the question of saving rights of action accruing for violation of the Housing & Rent Act, and again amended the Saving Clause appearing in Title II thereof, at which time Section 204(f)(4) was amended to provide, that notwithstanding the provisions of paragraph (1) or (3) of this sub-section (f) that right of action was saved, etc. Had the Congress intended to save a right of action to the United States or anyone else after a termina-

tion of the provisions of Title II under Section 204 (j) (3), it could have very easily have said: "notwithstanding the provisions of paragraph (1) or (3) of this sub-section, and notwithstanding the provisions of paragraph (j) (3) of this Title," it did not see fit to do so, and under all rules of statutory construction, it is presumed that Congress acted with full knowledge of the construction that had been placed on this matter by the Fifth Circuit in this case and approved the same.

II. IF ANY RIGHT OF ACTION SURVIVED TO THE UNITED STATES UNDER THE HOUSING & RENT ACT, AFTER THE TERMINATION OF TITLE II UNDER THE PROVISIONS OF SECTION 204 (j) (3) THEREOF, SUCH RIGHT IS LIMITED TO THE LEGAL ACTION UNDER SECTION 205 (a), AND THE ONE YEAR PERIOD OF LIMITATION PROVIDED IN SUCH SECTION APPLIES.

The Fifth Circuit in this case, did nothing more than hold that upon decontrol by the City of Dallas under the provisions of Section 204 (j) (3) of the Act, no cause of action survived to the United States except one at law for damages to the extent barred by the one year statute of limitation. The Court below in its opinion said "It seems clear that any suit at law for damages to the extent not barred by the one year statute of limitation, that had accrued prior to the decontrolling of Dallas, might still be enforced for such damages, notwithstanding the termina-

tion of control." (R. 15) And again in its opinion, the Court said "But in the present case, there is no right of action surviving for an injunction and no other equitable action to which restitution could be an adjunct, with the result that under the *legal action that survives decontrol*, the statute of limitation of one year is in full force and effect". (R. 18) (Italics ours)

The decision of the Fifth Circuit in this case does no violence whatsoever to the holding of this Court in Porter vs. Warner Holding Company, 328 US 395, but rather definitely follows such holding. It makes little if any difference, except for the legal fiction of restitution, whether the judgment be called for restitution or for damages, the amount would nevertheless be limited to that period as provided by statute. This is true because of the fact that at the time of the filing of this suit, the complaint *invoked only the jurisdiction of the District Court in an action at law.*

The respondents are inclined to agree with Justice Waller in his opinion in this case, wherein he states "It (restitution) is now and always has been a type of relief afforded as an incident to suits at law, as well as in equity", and respondents certainly agree with his further statement, which was but applying the holding of this Court in Porter vs. Warner Holding Company supra, where he continued and said "But which equity had no jurisdiction to grant unless it had acquired jurisdiction of a *cause in*

equity involving a primary right under equitable principles."

In none of the cases cited by petitioners has any Court ever held that there was any *equitable power* to award restitution in any case where the equitable jurisdiction of the Court had not attached. The Fifth Circuit in this case, when considering the later case of Miller vs. United States, apparently declined to re-consider its opinion in this case, for the reason that it was so clearly distinguishable from the Miller case, as well as the Jackson case. The petition for writ of certiorari filed by petitioners herein, contends that the decision of the Court below is in conflict with four other Courts of Appeal, as well as its own prior decision in Creedon vs. Randolph, 165 Federal 2d, 918, and in so contending, wholly fails to see the distinction between the case at bar and those cases, which distinction was clearly drawn by the Fifth Circuit, both in its decision of this case, and in later consideration of the Miller case, the factual distinction being that this action was filed after the right to do so as an equitable action had been terminated. This distinction respondents submit is all important and, when the decision in this case is considered in the light of this factual distinction, it is readily apparent that the Fifth Circuit in its opinion in this case, has given full effect to the prior decision of this Court in Porter vs. Warner Holding Company, supra, where this Court said:

"It is readily apparent from the foregoing that a decree compelling one to disgorge profits, rents or property ac-

quired in violation of the Emergency Price Control Act, may properly be entered by a District Court *once its equity jurisdiction has been invoked under* §205."

There is no mistaking the holding of this Court on that matter and clearly holds that before a District Court can exercise its equitable power conferred by §205 (a) of the Emergency Price Control Act of 1942, that the District Court must have acquired an equitable jurisdiction. This was further recognized when the Court in the course of its opinion again said:

> "To be sure such a recovery (restitution) could not be obtained through an independent suit in equity, if an adequate legal remedy were available",

and construing §205 (e) of that Act, which Section for practical purposes is identical with §205 (a) of the Act, under consideration herein, said:

> "§205 (e) supersedes that possibility (that is, the possibility of equitable jurisdiction) and provides an exclusive remedy relative to damages. It establishes the sole means whereby individuals may assert their private right to damages, and whereby the administrator, on behalf of the United States may seek damages in the nature of penalties. Moreover, a Court giving relief under §205 (e) acts as a *Court of law* rather than as a Court of equity."

The holding of the Court of appeals in this case is just that simple, after having determined as a fact that rent control had been terminated in Dallas prior to the filing of this action, it literally applied this Court's holding in the

Warner case, for if any action survived whatsoever, it clearly was an action at law, and §205 (a) of this Act as effectively superseded the equitable action under §206(b) as did §205 (e) of the Price Control Act of 1942.

In the later case of Miller vs.United States by the Fifth Circuit, both the appellant, Miller, and the United States, urged to that Court that it made no legal difference insofar as the time of filing of the complaint was concerned. Respondents can not agree with such position for the reason that it is a matter of jurisdiction. Whether under the Savings Clause, the Court had jurisdiction to render any type of judgment whatsoever, except that of dismissal, in the first instance, and in the second instance as to whether or not after decontrol, it could acquire any equitable jurisdiction. It was this factual distinction that the Court of Appeals relied on.

While not agreeing with the statement of appellant, Miller, in its brief to the effect that there is and should be no distinction between the situation, and that it is not a matter of whether or not the Court had jurisdiction under the Savings Clause, respondents do agree that notwithstanding the factual differences, and notwithstanding the question of jurisdiction raised by respondents, it is also involved as to whether the United States had a right to enforce compliance with the law that in keeping with public policy was no longer in effect. Respondents are also certainly in accord with the position of the appellants in

the Miller case that the United States had an adequate remedy at law, and its entire complaint in the Trial Court, the Court of Appeals and in this Court, is nothing more nor less than a smoke screen to circumvent the period of limitation provided for in the Act. The appellants in the Miller case, as well as the Fifth Circuit, in deciding that case, clearly recognized that the Fifth Circuit had followed the Warner Holding Company case because the appellants in its brief, in that case, made this statement:

> "We feel that under the Warner Holding Company case this Court should carry its reasoning in Moore vs. United States to a logical conclusion and hold that the Trial Court in this cause was not justified in granting an order of restitution where an injunction could not be properly granted, and where compliance with a terminated law could not be compelled."

This statement from appellant's brief in that case, respondents submit, logically sums up the applicable law to this type of situation, whether the suit was filed before or after decontrol, because it can not be seriously argued that a Court would be justified in granting an injunction or other proper order for the enforcement of an act when no violation was being committed, either at the time of the filing of the suit or at the time of the trial, for the simple reason that the controls had ended. Certainly this should be true where the controls had ended, as in this case, prior to the filing of the complaint in the District Court.

Before this Honorable Court should give the far reaching effect to its prior holding in the Warner Holding Company case, supra, sought by the United States we respectfully urge that this Court reconsider the entire matter and give effect to what appears to be the better reasoning in the minority opinion in that case, for certainly it was not intended by this Court, we feel sure, to establish a remedy and provide a penalty which the Congress had not seen fit to grant to the United States.

III. WHERE THE TRIAL COURT HAS ACTED UPON A COMPLAINT AS HAVING INVOKED ITS EQUITY JURISDICTION, THE DEFENDANTS ARE DEPRIVED OF THEIR RIGHT TO A TRIAL BY JURY WHERE THE ONLY ISSUE INVOLVED IS PURELY ONE AT LAW, AND A JUDGMENT OF REVERSAL SHOULD CARRY WITH IT INSTRUCTIONS TO TRY THE MATTER AS AN ACTION AT LAW WITH ALL THE RIGHTS OF THE PARTIES INCIDENT TO SUCH AN ACTION.

In this action, the defendants in the Trial Court, respondents here, have been deprived of their Constitutional right to a trial by jury by this action having been treated as one in equity. This matter was properly raised in the Court of Appeals and this Honorable Court, if for no other reason, should reverse this cause and remand the same to the Trial Court with appropriate instructions.

It is respectfully submitted that under the previous holdings of this Court, that notwithstanding the absence of a cross-petition, this matter is properly presented. Walling vs. General Industries Company, 330 US 545; Public Service Commission of Puerto Rica vs. Havemeyer, 296 US 506; and Storey Parchment Company vs. Patterson P. Paper Company, 282 US 555.

CONCLUSION

In conclusion it is respectfully submitted that the judgment of the Circuit Court should be modified and affirmed and this cause remanded to the Trial Court, with instructions to dismiss the complaint, in the alternative that the judgment of the Court of appeals be affirmed with cause remanded to the Trial Court, with the further instruction to try the remaining issues as an action at law.

Respectfully submitted,

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APPENDIX

After being amended by the Housing and Rent Act of 1949, the appropriate sub-divisions of Section 204, in effect at the time, provides as follows:

204 (f) The provisions of this Title (Section 1891-1899 of this appendix) shall cease to be in effect at the close of June 30, 1950, or upon the date of a proclamation by the President, or upon the date specified in the concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Title (said section), is not necessary because of the existence of an emergency, whichever date is the earlier: Except that as to rights or liabilities incurred prior to such termination date, the provisions of this Title (said sections) and regulations, orders, and requirements thereunder, shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such liability.

204 (j) (2) provided: If any State by law declares that Federal Rent control is no longer necessary in such State or any part thereof, and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make announcement to that effect that he has been so advised. At the same time, all rent controls under this Act, as amended (Sections 1881-1910 of this appendix) with respect to housing accommodations within such State or part thereof, shall be terminated on the fifteenth day after

receipt of such advice. As used in this sub-section, the term "State" means any State, territory, or possession of the United States.

204 (j) (3) in effect at the time provided as follows: *The Housing Expediter shall terminate the provisions of this Title* (Sections 1891-1899 of this appendix) in any incorporated City, Town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such City, Town or Village: *Provided, however*, that such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *and provided further* that where the major portion of a defense rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

Sec. 205 Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, or shall be liable to the United States as hereinafter provided, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50.00, or (2) three times the amount by which the pay-

ment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: Provided, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State or Territorial court of competent jurisdiction within one year after the date of such violation: Provided, that if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the United States may institute such action within such one year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of the action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or

received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered.

Sec. 206 (b) in effect at such time provided: Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act (Sections 1881-1810 of this appendix,) ** or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial Court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Sec. 204 (f) of the act was amended by Acts of June 23, 1950, Chapter C354 §3 and §5 by the Congress breaking such section down into four numbered sub-divisions, the first two of which are important to the consideration of this case, and as amended, provide as follows: (f) (1) The provisions of this Title (Section 1891-1902 of this appendix) except Section 204 (a) [Sub-section (a) of this sec-

tion] shall cease to be in effect at the close of December 31, 1950, except that they shall cease to be in effect at the close of June 30, 1951.—* * *

204 (f) (4) Notwithstanding any provisions of paragraphs (1) or (3) of this sub-section, the provisions of this Title (Sections 1891-1902 of this appendix) and regulations, orders and requirements thereunder shall be treated as still remaining in force for the purposes of sustaining any proper suit or action with respect to any right or liability incurred prior to the termination date specified in such paragraph.